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JUL 20 2010

**SURFACE  
TRANSPORTATION BOARD**

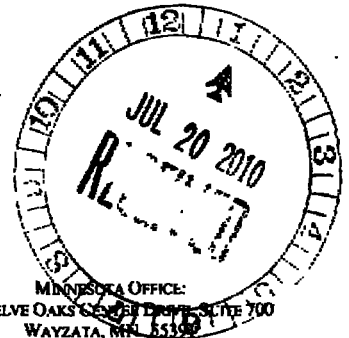
July 20, 2010

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VIA HAND DELIVERY

Anne Quinlan, Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20024

FD - 35393

227456

Re: Providence & Worcester Railroad Company – Petition for Declaratory Order

Dear Ms. Quinlan:

Enclosed for filing is an original and 10 copies of Providence & Worcester Railroad Company – Petition for Declaratory Order and attached exhibits, along with our filing fee in the amount of \$1400.

We have also enclosed a copy of the Petition for date stamp and return to us via our messenger.

Thank you for your assistance with filing.

Very truly yours,

David K. Monroe

ENTERED  
Office of Proceedings

JUL 20 2010

Part of  
Public Record

Enclosures

cc w/Enclosures via First Class Mail to:

Ronald T. Gerwatowski, Deputy General Counsel  
*National Grid*  
40 Sylvan Road  
Waltham, MA 02451

**FEE RECEIVED**

JUL 20 2010

**SURFACE  
TRANSPORTATION BOARD**

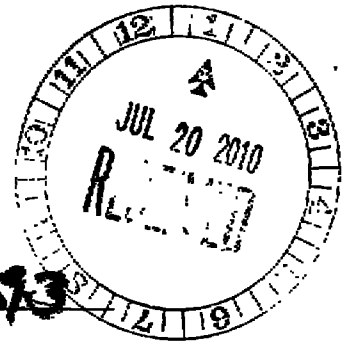


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BEFORE THE  
SURFACE TRANSPORTATION BOARD

PROVIDENCE AND WORCESTER  
RAILROAD COMPANY, )

Finance Docket No. ~~35373~~



**PETITION FOR DECLARATORY ORDER**

Providence and Worcester Railroad Company ("P&W") hereby petitions the Surface Transportation Board (the "Board"), pursuant to 5 U.S.C. § 554(e), 49 U.S.C. § 721, and the Board's Rules of Practice, for a declaratory order that (1) the Board has exclusive jurisdiction over P&W's use of its railroad right-of-way for rail transportation, and (2) regulation of P&W's use of its railroad right-of-way under state law by the Massachusetts Department of Public Utilities is preempted pursuant to 49 U.S.C. § 10501(b).

The Board should issue a declaratory order in this matter to resolve an existing controversy regarding the right of P&W to the exclusive use of its right-of-way, and to remove any legal uncertainty regarding the Board's exclusive jurisdiction over P&W's use of its right-of-way. In the absence of such a declaratory order, P&W may be stymied in its efforts to build additional track along its right-of-way, expand its operations, and enjoy the full use of its right-of-way for the purposes of rail transportation.

**I. FACTUAL BACKGROUND**

P&W is a Class II railroad duly authorized to operate as a common carrier rail carrier and is subject to regulation by the Board. *See* Verified Declaration of P. Scott Conti ("Conti Declaration") at ¶ 2, attached hereto. P&W provides rail freight service over approximately 525 miles of track located in the states of Rhode Island, Massachusetts, Connecticut and New York. *Id.* P&W transports a wide variety of

commodities for its customers, including automobiles, construction aggregate, iron and steel products, lumber, coal, ethanol, chemicals, scrap metals, plastic resins, cement, processed foods and edible food stuffs, such as frozen foods and corn syrup. *Id.*

P&W's Gardner Branch Line extends for 26.1 miles from Worcester to Gardner, Massachusetts, and is an integral part of P&W's system. *Id.* at ¶ 3. P&W acquired the Gardner Branch in fee simple, including the right-of-way on which it is situated, from the Boston and Maine Corporation ("B&M"). *Id.* A schematic showing the Gardner Branch and connecting lines is attached hereto as Attachment A. P&W currently conducts substantial freight operations over the Gardner Branch, and has done so since its acquisition in 1974 and 1984. *Id.*

P&W is planning to build a second track (the "Second Track") on portions of the Gardner Branch right-of-way running from Worcester, Massachusetts (MP 0.0) to Barber's Crossing (MP 2.9) (the "Corridor"), in order to handle an anticipated increase in traffic along this Corridor. *Id.* at ¶ 4. P&W expects an increase in freight movements along this Corridor partly as a result of the Board's March 10, 2009 approval of a joint venture between Pan Am Railways, Inc. ("Pan Am") and Norfolk Southern Railway Company ("Norfolk Southern").<sup>1</sup> *Id.* Prior to the above-referenced joint venture, CSX interchanged with Pan Am at Rotterdam Junction and Springfield in addition to Barber's Crossing, but now interchanges only at Barber's Crossing. *Id.* In 2010, the Commonwealth of Massachusetts will acquire the Boston and Albany line from CSX in order to use it for passenger service, which may require additional (rerouted) freight traffic to travel over the Corridor. *Id.* Additionally, the Massachusetts Bay Transit

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<sup>1</sup> See *Norfolk Southern Railway Company, Pan Am Railways, Inc. et al. – Joint Control and Operating/Pooling Agreements – Pan Am Southern LLC*, STB Finance Docket No. 35147 (served March 10, 2009) at 11-12 (noting that the CSX traffic with Pan Am will interchange at Barber's Crossing).

Authority (“MBTA”) board has approved a deal that allows the state to purchase a section of railroad track to expand commuter rail service from Worcester to Boston through Ayer. *Id.* P&W expects this additional traffic to travel over the Corridor as well. *Id.* P&W believes that the increase in traffic on the Gardner Branch will require a second set of tracks over the Corridor. *Id.*

The construction of the Second Track along the Corridor will require the full use of P&W’s right-of-way. *Id.* However, National Grid, through its subsidiary New England Power Company (“NEPCO”), currently occupies a portion of the right-of-way in the Corridor. *Id.* at ¶ 5. Pursuant to a license agreement entered into between B&M and NEPCO in 1966 (the “1966 License”), NEPCO installed and continues to maintain an electric transmission line (the “O-141S line”) over a portion of the Corridor right-of-way. *Id.* The O-141S line is supported by poles installed on a portion of the Corridor right-of-way on which P&W intends to build the Second Track. *Id.* P&W understands that the O-141S line is used as a backup for another transmission line serving the City of Worcester. *Id.*

Pursuant to the terms of the 1966 License, either party can terminate the license upon 30 days written notice. *Id.* at ¶ 6. The 1966 License further provides that NEPCO “shall remove all its poles, wires or other materials” from the right-of-way within 10 days after the termination of the License, and restore the right-of-way to its original condition. *Id.* In addition, the 1966 License granted B&M (now P&W) the right to remove NEPCO’s transmissions lines at the expense of NEPCO upon termination of the 1966 License. *Id.*

In March 2009, P&W advised National Grid of the need to relocate the O-141S line from the Corridor in order to enable P&W to build the Second Track on the Corridor right-of-way.<sup>2</sup> *Id.* at ¶ 7. P&W did not immediately terminate the 1966 License, but instead gave National Grid ample time to make plans to relocate the O-141S line from the P&W right-of-way. *Id.* In addition, P&W indicated a willingness to discuss alternative resolutions to the problem, including allowing National Grid to remain on the P&W right-of-way if National Grid were willing to subsidize the purchase of additional land upon which to locate the Second Track. *Id.*

P&W and National Grid considered options for an orderly relocation of the O-141S line from the P&W right-of-way for months. *Id.* at ¶ 8. However, by March 2010 – a year after National Grid was advised of the need to remove the O-141S from the P&W right-of-way – the NEPCO transmission line remained on the Gardner Branch right-of-way, National Grid had still not committed to a schedule for removal its transmission lines from P&W’s right-of-way, and P&W continued to be unable to move forward with its plans to build the Second Track on the Gardner Branch right-of-way. *Id.* Consequently, on March 3, 2010, P&W served National Grid with a notice of termination of the license for the O-141S line, granting National Grid 60 days (30 days more than required under the 1966 License) to remove the O-141S line from P&W’s right-of-way.<sup>3</sup> *Id.*

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<sup>2</sup> P&W’s engineering study determined that it is physically impossible to build the Second Track unless the poles are removed from the P&W right-of-way. Conti Declaration at ¶ 4.

<sup>3</sup> Because the March 3, 2010 termination notice erroneously referred to a different license for a parallel transmission line (the “O-141N”) located primarily on property of Pan Am, on May 25, 2010, P&W, in an abundance of caution, sent a subsequent termination notice referencing the 1966 License, which notice was received by National Grid on May 26, 2010, and termination of the 1966 License was therefore effective no later than June 25, 2010. Conti Declaration at ¶ 8.

National Grid did not remove the O-141S line after the termination of the 1966 License as required by the terms of the License. *Id.* at ¶ 9. Instead, National Grid asserted that Massachusetts state law governs any conflict between P&W's use of its right-of-way for rail purposes and National Grid's use of the P&W right-of-way for the transmission of electricity. *Id.* In particular, National Grid asserted that pursuant to Massachusetts General Law, Chapter 164, Section 73 ("M.G.L., c. 164, § 73"), National Grid could not be required to remove the O-141S line from the P&W right-of-way without the consent of the Massachusetts Department of Public Utilities ("MassDPU"). *Id.*

M.G.L., c. 164, § 73 provides, in pertinent part:

If such [electric transmission] corporation has lawfully constructed for such purposes poles, towers, or similar structures within the location of such railroad . . . then it shall not thereafter be required to remove, abandon or cease to operate such facilities without the consent of the department.

Thus, where there is a conflict between the use of a railroad right-of-way for rail and electric transmission purposes, Section 73 purports to vest in the MassDPU the discretion to determine that the interests of electric transmission are sufficient to interfere with a railroad's full use of its railroad right-of-way.

Although P&W and National Grid have continued to discuss possible resolutions to the continuing interference with P&W's exclusive use of its right-of-way for rail purposes, National Grid has threatened to institute proceedings at the MassDPU to prevent P&W from forcing the removal of the O-141S line either through judicial proceedings or through self-help pursuant to the terms of the License. *Id.* at ¶ 9.

P&W cannot move forward with its plans to expand its operations along the Corridor until the dispute involving the removal of the National Grid poles is resolved.

*Id.* at ¶ 10. Should proceedings be instituted at the MassDPU, P&W's expansion plans would be delayed indefinitely, and P&W unnecessarily would be caught up in expensive and time-consuming legal proceedings regarding its right to use its right-of-way for railroad purposes – a matter that is within the exclusive jurisdiction of the Board. *Id.* The delay in moving forward with P&W's expansion plans will significantly and adversely affect P&W's ability to meet existing and future rail service requirements. *Id.*

## **II. THE BOARD SHOULD ISSUE A DECLARATORY ORDER IN THIS MATTER**

Under 5 U.S.C. § 554(e) and 49 U.S.C. § 721, the Board may issue a declaratory order to terminate a controversy or remove uncertainty. The Board has previously granted petitions for declaratory orders to delineate the scope of its exclusive jurisdiction over transportation by rail carrier and to determine whether state regulation of rail transportation is preempted by federal law under 49 U.S.C. § 10501(b). *See, e.g., City of Lincoln – Petition for Declaratory Order*, STB Finance Docket No. 34425 (served August 11, 2004) (declaratory order granted to resolve dispute regarding state law regulation of railroad right-of-way); *The New York City Economic Development Corporation – Petition for Declaratory Order*, STB Finance Docket No. 34429 (served July 15, 2004) (declaratory order granted to address scope of Board's exclusive jurisdiction and preemption of state regulation of rail transportation). The Board should do so here because this matter involves a genuine controversy, the resolution of which would remove legal uncertainty that stands in the way of P&W's rail operations along the Gardner Branch.

A genuine controversy exists relating to the Board's exclusive jurisdiction over the right of a railroad to make full and exclusive use of its right-of-way. In particular, a

live dispute exists over whether P&W's use of its right-of-way – and its ability to expeditiously pursue expansion of the Gardner Branch Line by adding a second track – is subject to the regulation of the MassDPU. The provisions of M.G.L., c. 164, § 73 indisputably assert state jurisdiction to determine the extent to which P&W may use its right-of-way and the terms and conditions under which it may do so. Indeed, M.G.L., c. 164, § 73 makes clear that, in the case of a conflict between the needs of a railroad to use its right-of-way for rail transportation purposes, and the needs of an electric transmission company to use the railroad right-of-way, the MassDPU has the authority under state law to allow the transmission line to interfere with the railroad's use of its own right-of-way.<sup>4</sup>

National Grid has expressly asserted that M.G.L., c. 164, § 73 bars the removal of its transmission lines on railroad rights-of-way, and has threatened to commence proceedings at the MassDPU to prevent the removal or relocation of its O-141S line from the P&W right-of-way. Unless the Board issues a declaratory order in this matter, P&W will be subjected to substantial legal uncertainty, including the likelihood of substantial cost and delay pending proceedings before the MassDPU and possible appeals. The existence of this legal uncertainty is preventing P&W from full utilization of its right-of-way and pursuing expansion plans on the Gardner Branch right-of-way in response to market requirements.

The law is clear that the Board has exclusive jurisdiction over a railroad's right to full use of its right-of-way. The Interstate Commerce Commission Termination Act of

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<sup>4</sup> M.G.L., c. 164, § 73 makes clear that the MassDPU cannot take a railroad right-of-way through eminent domain to facilitate new construction of transmission poles, but can order that poles already in place not be removed. Accordingly, in this case, MassDPU could not order relocation of the National Grid poles to another part of the P&W right-of-way, since that would be tantamount to a taking by eminent domain. Thus, the only option available to MassDPU to serve the interests of the transmission of electricity would be to order that the National Grid poles remain in place. Such an order would defeat P&W's plans to construct the Second Track on the Corridor.



1995 ("ICCTA") provides that the Board has exclusive jurisdiction over "transportation by rail carriers" and the jurisdiction of the Board preempts all other remedies under state law. 49 U.S.C. § 10501(b). "Rail transportation" is broadly defined to encompass any property, facility or equipment related to the movement of freight by rail. A railroad right-of-way is property related to the movement of freight by rail, and is thus within the Board's exclusive jurisdiction. See *City of Lincoln v. S.T.B.*, 414 F.3d 858, 861 (8th Cir. 2005) (upholding STB decision that application of eminent domain to railroad right-of-way preempted by federal law); *Wisconsin Central Limited v. City of Marshfield*, 160 F. Supp. 2d 1009 (W.D. Wis. 2000) (federal preemption prohibits acquisition of portion of railroad right-of-way through state eminent domain statute). Indeed, the Board has previously found that it has exclusive jurisdiction to determine whether state regulation affecting a railroad right-of-way is preempted. See *City of Lincoln – Petition for Declaratory Order*, STB Finance Docket No. 34425 (served August 11, 2004) (holding that state law that unduly prevents or interferes with rail operations is preempted).

The law is also clear that the Massachusetts statute purporting to grant the MassDPU the authority to regulate the use of P&W's right-of-way is preempted by federal law under 49 U.S.C. § 10501(b). As a preliminary matter, the Board and the courts have repeatedly held that any form of state or local regulation involving preclearance or permitting requirements on the operations of railroads is categorically preempted because such regulation, by its nature, could be used to deny or defeat a railroad's ability to conduct its operations. See, e.g., *City of Auburn v. U.S.*, 154 F.3d 1025 (9th Cir. 1998) (state regulation requiring land use and environmental permits necessarily preempted); *Green Mountain R.R. v. State of Vermont*, 404 F.3d 638 (2d. Cir.

2005) (state authority to issue preconstruction permits for rail facility absolutely preempted by 49 U.S.C. § 10501(b)).

The Massachusetts statute at issue here is just such a preclearance requirement. The provisions of M.G.L., c. 164, § 73, like state permitting/preclearance regulations, require that P&W seek the prior consent of MassDPU, before requiring the removal of transmission poles that encroach on its right-of-way. Indeed, M.G.L., c. 164, § 73 makes clear that MassDPU possesses the discretion to order that the National Grid poles remain in place. Thus, P&W's ability to make full use of its right-of-way – including the addition of a second track to meet changing market conditions – is subject to preclearance requirements that could deny or defeat P&W's rail construction plans. Accordingly, M.G.L., c. 164, § 73 is categorically preempted by federal law.

Moreover, the application of M.G.L., c. 164, § 73 in this case would clearly prevent or unduly interfere with P&W's railroad operations and interstate commerce. P&W cannot go forward with its plans to build the Second Track on the Gardner Branch right-of-way until it can be sure that the O-141S line is relocated from its right-of-way. P&W's use of its right-of-way has already been interfered with for more than a year while P&W has been attempting to work with National Grid to effect an orderly relocation of the O-141S line. If P&W is forced to participate in a proceeding at the MassDPU – and any appeals that may result – its expansion plans may be delayed indefinitely or even defeated.

In *City of Lincoln – Petition for Declaratory Order*, STB Docket No. 34425 (served August 12, 2004), the Board made clear that threats to use state regulation to interfere with a railroad's use of its right-of-way justify the issuance of a declaratory

order regarding the Board's exclusive jurisdiction and federal preemption. In *Lincoln*, the City threatened to use state eminent domain law to acquire an easement over a railroad's right-of-way for the purposes of building a pedestrian/bicycle trail. The City asserted that the railroad was not using all its right-of-way for rail transportation and that the railroad's operations could be safely conducted within the narrower right-of-way that would remain after the construction of the pedestrian/bicycle trail. The railroad countered that it needed the entirety of its right-of-way for its current operations and also asserted that it was considering expanding its rail operations in the future – expansion plans that would require the use of the entirety of its right-of-way. The Board issued a declaratory order to assert its exclusive jurisdiction over a railroad's use of its right-of-way for rail transportation and to make clear that threats to interfere with a railroad's present or future use its right-of-way through the application of state law are preempted under 49 U.S.C. § 10501(b).<sup>5</sup>

This case presents an even more egregious threat to the integrity of railroad rights-of-way than at issue in *Lincoln*. The possible application of the Massachusetts statute to prevent the removal of the National Grid poles would not just endanger an indefinite future use of a railroad right-of-way, it would thwart P&W's existing expansion plans as well as its ability to meet current and anticipated needs in the market for rail transportation in New England. The Board should grant this Petition and issue a declaratory order asserting its exclusive jurisdiction over this controversy and holding that the application of M.G.L., c. 164, §73 to P&W's right-of-way is preempted.

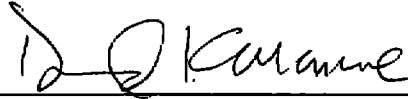
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<sup>5</sup> The Board's decision in *Lincoln* was upheld on appeal. *City of Lincoln v. S.T.B.*, 414 F.3d 858, 861 (8th Cir. 2005).

### III. CONCLUSION

For the foregoing reasons, P&W respectfully requests that the Surface Transportation Board grant its Petition for a Declaratory Order, and determine that the application of M.G.L., c. 164, §73 to P&W's right-of-way is preempted.

Respectfully submitted,



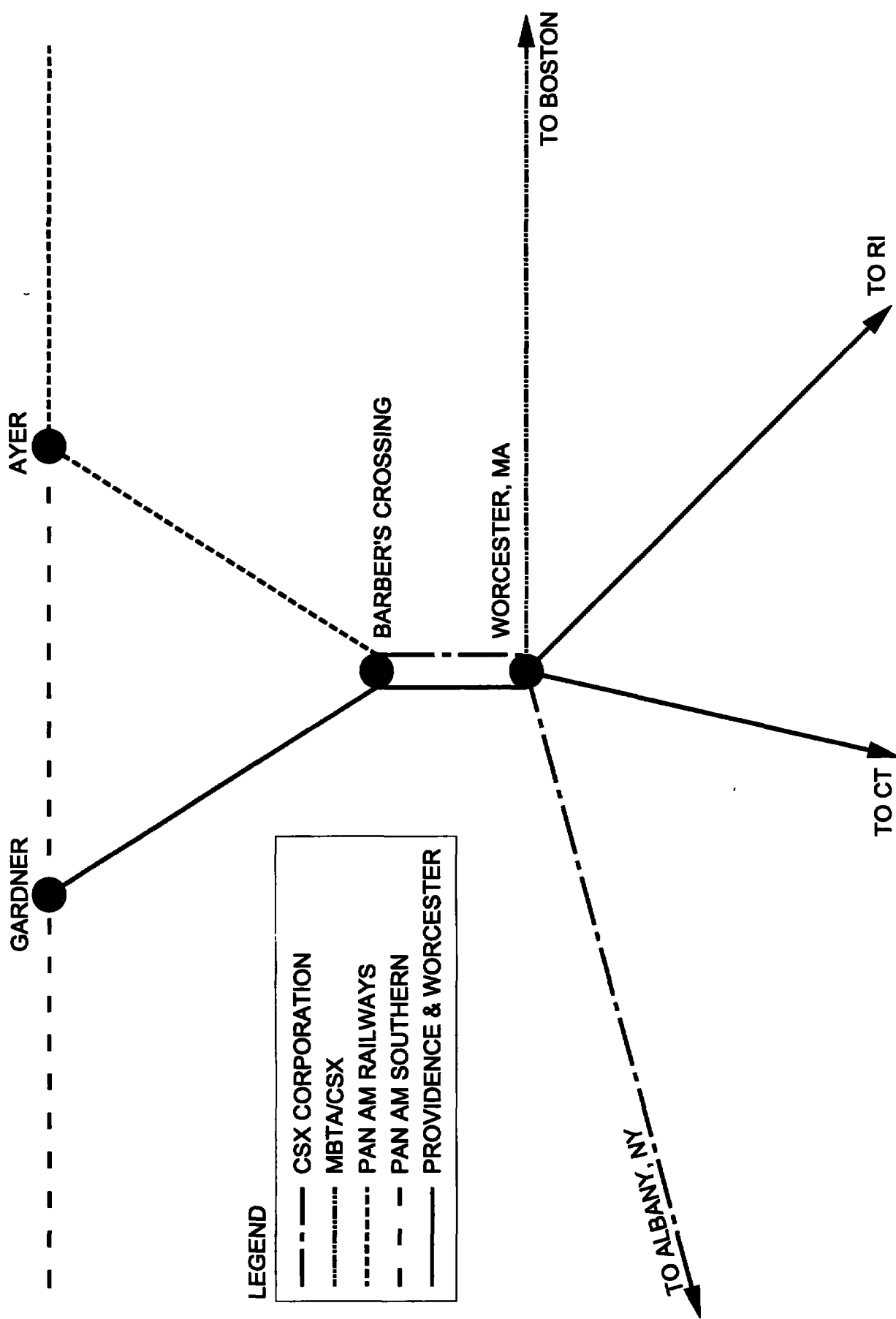
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DATE: July 20, 2010

# **ATTACHMENT A**



LEGEND

- CSX CORPORATION
- - - MBTA/CSX
- ..... PAN AM RAILWAYS
- - - PAN AM SOUTHERN
- PROVIDENCE & WORCESTER

BEFORE THE  
SURFACE TRANSPORTATION BOARD

PROVIDENCE AND WORCESTER            )  
RAILROAD COMPANY,                    )     Finance Docket No. \_\_\_\_\_

**VERIFIED DECLARATION OF P. SCOTT CONTI**

I, P. Scott Conti, hereby make this verified statement in support of Providence and Worcester Railroad Company's ("P&W") Petition for Declaratory Order.

1.     I am President of P&W, and accordingly responsible for the operations, business strategy and financial performance of P&W. I am familiar with P&W's expansion plans on the Gardner Branch and have been fully briefed on P&W's dealings with National Grid regarding the relocation of its transmission poles from the P&W right-of-way.

2.     Providence and Worcester Railroad: P&W is a Class II railroad duly authorized to operate as a common carrier railroad and is subject to regulation by the Surface Transportation Board ("STB"). P&W provides rail freight service over approximately 525 miles of track located in the states of Rhode Island, Massachusetts, Connecticut and New York. P&W transports a wide variety of commodities for its customers, including automobiles, construction aggregate, iron and steel products, lumber, coal, ethanol, chemicals, scrap metal, plastic resins, cement, processed foods and edible food stuffs, such as frozen foods and corn syrup.

3.     P&W's Gardner Branch Line: P&W's Gardner Branch line (the "Gardner Branch") extends for approximately 26.1 miles from Worcester to Gardner, Massachusetts from MP 0.0 to MP 26.1. The Gardner Branch is an integral and important part of P&W's system. P&W acquired the Gardner Branch in fee simple,

including the right-of-way, from the Boston & Maine Corporation ("B&M") in 1974 and 1984. P&W currently conducts substantial freight operations over the Gardner Branch and has done so since its acquisition.

4. Anticipated Increase in Traffic on the Gardner Branch: P&W anticipates a substantial increase in freight movements along the Gardner Branch line, particularly along a portion of the Gardner Branch running from Worcester (MP 0.0) to Barber's Crossing (MP 2.9) (the "Corridor"). A number of recent developments contribute to the anticipated increase in freight movements over the Gardner Branch, including the STB's March 2009 approval of a joint venture between Pan Am Railways, Inc. ("Pan Am") and Norfolk Southern Railway Company ("Norfolk Southern"). Traffic that Class I carrier CSX Transportation, Inc. ("CSX") previously interchanged with Pan Am at other points on its system may be shifted to move over the Corridor to the Barber's Crossing interchange. Prior to the above-referenced joint venture, CSX interchanged with Pan Am at Rotterdam Junction and Springfield in addition to Barber's Crossing, but now interchanges only at Barber's Crossing. In 2010, the Commonwealth of Massachusetts will acquire the Boston and Albany line from CSX in order to use it for passenger service, which may require additional (rerouted) freight traffic to travel over the Corridor. Additionally, the Massachusetts Bay Transit Authority ("MBTA") board has approved a deal that allows the state to purchase a section of railroad track to expand commuter rail service from Worcester to Boston through Ayer. P&W expects this additional traffic to travel over the Corridor as well. In order to efficiently handle anticipated increases in traffic, P&W will need to install a second set of tracks over the Corridor (the "Second Track"). P&W has prepared engineering studies and plans in anticipation of constructing



the Second Track and has determined that adding the Second Track along the Corridor will require the full use of P&W's existing right-of-way. It is physically impossible to construct the Second Track on P&W's existing right-of-way without removing the poles supporting National Grid's O-141S transmission line.

5. The National Grid Transmission Lines: National Grid, through its subsidiary, New England Power Company ("NEPCO"), currently occupies a portion of the right-of-way on the Corridor. Pursuant to a license agreement entered into between B&M (P&W's predecessor-in-interest) and NEPCO in 1966 (the "1966 License"), NEPCO installed and continues to maintain an electric transmission line (the "O-141S line") along and over a portion of the Corridor right-of-way on which P&W plans to install the Second Track. P&W understands that the O-141S line is used as a backup for another transmission line serving the City of Worcester. The O-141S line is supported by poles installed on the portion of the P&W right-of-way where P&W is planning to construct the Second Track on the Corridor. The Second Track cannot be installed unless the NEPCO poles are removed from the P&W right-of-way.

6. The 1966 B&M/NEPCO License: Pursuant to the terms of the 1966 License, either party can terminate the license upon 30 days' notice. A copy of the 1966 License is attached to this Verified Declaration as Exhibit 1. The 1966 License further provides that NEPCO "shall remove all its poles, wires or other materials from the [right-of-way] within 10 days after the termination of this license and shall restore the said premises" to its original condition. The 1966 License granted B&M (and now P&W) the right to remove NEPCO's transmission poles at the expense of NEPCO upon termination of the 1966 License, if NEPCO fails to do so.

7. Discussions With National Grid About Relocation of the O-141S Line: In March 2009, P&W advised National Grid of the need to relocate the O-141S line from the Corridor in order to enable P&W to build the Second Track on the Corridor right-of-way. Copies of electronic mail between P&W and National Grid dated March 10, 2009, March 12, 2009, and March 16, 2009 are attached hereto as Exhibit 2. As a result of this correspondence, personnel from both P&W and National Grid viewed the right-of-way along the Corridor on a hi-rail trip on March 25, 2009. P&W's engineering studies determined that it would not be practicable to build a second set of tracks unless the National Grid poles are removed from P&W's right-of-way. P&W did not immediately terminate the 1966 License, but instead attempted to give National Grid more than enough time to make plans to relocate the O-141S line from the P&W right-of-way. P&W also indicated its willingness to discuss alternate resolutions, including allowing National Grid to remain on the P&W right-of-way if National Grid were willing to subsidize the purchase of additional land upon which P&W could locate the Second Track. A copy of P&W's letter to National Grid dated April 28, 2009 is attached hereto as Exhibit 3.

8. Termination of the 1966 License: P&W and National Grid considered options for an orderly relocation of the O-141S line from the P&W right-of-way for a considerable amount of time. By March 2010, a year after P&W first advised National Grid of the need to remove the O-141S line from the P&W right-of-way, National Grid had still not committed to a schedule for removal of the poles in order to allow P&W to move forward with its plans to build a second track on the Gardner Branch right-of-way. As a result, on March 3, 2010, P&W served National Grid with a notice of termination of

the 1966 License. A copy of the March 3, 2010 Notice of Termination is attached hereto as Exhibit 4. P&W gave National Grid 60 days – which was 30 days more than required under the 1966 License – to remove the O-141S line from P&W’s right-of-way. Because the March 3, 2010 termination notice erroneously referred to a different license for a parallel transmission line (the “O-141N”) located primarily on property of Pan Am, on May 25, 2010, P&W, in an abundance of caution, sent a subsequent termination notice referencing the 1966 License, which notice was received by National Grid on May 26, 2010, and termination of the 1966 License was therefore effective no later than June 25, 2010. A copy of the May 25, 2010 notice of termination is attached hereto as Exhibit 5.

9. National Grid’s Threat to Commence Proceedings at the Massachusetts Department of Public Utilities: Since no later than July 5, 2010, National Grid has had no legal right to occupy P&W’s right-of-way on the Corridor. National Grid did not remove the O-141S line after the termination of the 1966 License as required by the terms of the license. Instead, National Grid has asserted that Massachusetts state law controls any conflict between P&W’s use of its right-of-way for rail purposes and National Grid’s use of the P&W right-of-way for the transmission of electricity. National Grid asserts that under Massachusetts General Law, Chapter 164, § 73 (M.G.L. c. 1964, § 73). National Grid cannot be required to remove the O-141S line from the P&W right-of-way without the consent of the Massachusetts Department of Public Utilities (“MassDPU”). A copy of National Grid’s March 31, 2010 letter is attached hereto as Exhibit 6. Although P&W has continued to engage in discussions with National Grid in an effort to resolve the dispute over the location of National Grid’s poles, National Grid continues to take the position that it cannot be forced to remove its poles from P&W’s

right-of-way without the consent of the MassDPU. National Grid has threatened to commence proceedings at the MassDPU if P&W attempts to force removal of the O-141S line through judicial proceedings or otherwise.

10. P&W's Expansion Plans Have Been Delayed Indefinitely: P&W cannot move forward with its plans to expand its operations on the Corridor until the issue of the location of the National Grid poles is resolved. If proceedings are commenced at the MassDPU, P&W's expansion plans will be delayed indefinitely, and P&W will be required to devote considerable resources in legal proceedings regarding the use of its own right-of-way for railroad purposes. The delay in P&W's expansion plans caused by proceedings at the MassDPU, and any legal appeals that might result, will significantly and adversely affect P&W's ability to meet existing and future rail service requirements.

I hereby declare and state under the penalties of perjury that the following verified statement is true and correct to the best of my personal knowledge.

July 19, 2010  
DATE

P. Scott Conti  
P. SCOTT CONTI

## **EXHIBIT 1**

**BOSTON AND MAINE CORPORATION  
RAILROAD**  
**POLE AND WIRE AGREEMENT**

THIS AGREEMENT, made in duplicate this 5th day of July, 1966, by and between the Boston and Maine ~~Corporation~~, a Corporation duly established by law, hereinafter called the "Railroad," and **NEW ENGLAND POWER COMPANY**, a Corporation duly established by law,

hereinafter called the "Licensee".

Witnesseth:

That, Whereas, the Licensee desires to erect and maintain one (1) single circuit 115 KV overhead transmission line consisting of three (3) 477,000 CM All Aluminum wires and one (1) Size 7 #8 Alumoweld ground wire attached to reinforced concrete foundation mounted steel poles on, over, along and across the premises of the Railroad in the City of Worcester, Massachusetts and the Town of West Boylston, Massachusetts ~~on the premises of the Railroad in the~~

as shown on plan hereto attached, marked

"NEW ENGLAND POWER COMPANY  
PLAN SHOWING PROPOSED TRANSMISSION  
LINE ON, ALONG, AND ACROSS LAND OF  
BOSTON AND MAINE CORPORATION  
W.N. & P. Main Line

{ Sheets 1 to 7 inclusive,  
{ numbered consecutively  
{ T-3814, T-3815, T-3816, T-3817,  
{ T-3818, T-3819, and T-3820-1."

Scale: 1" = 100 ft. Date: May 9, 1966

Now, Therefore, the Railroad, in consideration of the covenants and agreements hereinafter expressed to be kept and performed by the Licensee, hereby gives to the Licensee, so far as it lawfully may, permission to construct and maintain said

overhead transmission line

as aforesaid, but upon the following conditions:

1. Before construction is begun the Licensee shall submit to the Chief Engineer of the Railroad for approval complete drawings, giving full information concerning the locations of the crossings, the dimensions and materials of the wires, their supporting towers or poles, the insulators, pins and other details, together with a statement of the characteristics of the current to be used. No work shall be done or material ordered until the plans are approved by the Chief Engineer of the Railroad. All work shall be subject to the inspection and approval of the Chief Engineer of the Railroad and his interpretations of the drawings and specifications, and his decisions as to the quantity and quality of the work shall be final and conclusive. All defective material shall be removed and replaced with suitable material, and all defective work made good by the Licensee.

2. Before any work connected with the construction, erection, repair, renewal or removal of said overhead transmission line is undertaken within or over the premises of the Railroad, the Licensee shall give due notice in writing to the Chief Engineer of the Railroad, except in cases of emergency; and all such work in connection therewith shall be done under the supervision of, and in a manner satisfactory to said Chief Engineer.

**Six Thousand Fifty Six and 00/100 (\$6056.00) the first year and**

3. The Licensee shall pay the Railroad as rental for the license herein given the sum of **Six Thousand Six and 00/100 (\$6006.00)** Dollars per year ~~thereafter~~ during the continuance of this license, effective the **15th** day of **October 1966**, and payable in equal **annual** advance payments. Notwithstanding the payment of any rental in advance the Railroad reserves the right to terminate this license as hereinafter provided and in case this license is so terminated the Railroad shall repay to the Licensee such portion of the rent paid for the then current rental year as is proportionate to the fraction of said rental year then unexpired; provided, however, that the Railroad shall be entitled to a total rental of not less than **Six Thousand Fifty Six and** Dollars.

4. The Licensee shall make at his/its own expense any changes in the location of said **overhead transmission line** or the supports which may from time to time be demanded by the Railroad.

5. The Licensee covenants and agrees to indemnify and save harmless the Railroad, its successors or assigns, and its officers, agents and servants, from and against any and all loss, cost, damage or expense, and against any and all claims or suits for property damage, personal injury or death caused by the existence, construction, maintenance, repair, renewal, change, relocation, removal or use of said poles, wires, supporting towers or other appurtenances when not caused solely by the negligence of the Railroad, its agents or servants, except that if such loss, injury or damage shall be caused by the joint or concurring negligence of both Parties hereto, it shall be borne by them equally; provided, however, that the Licensee agrees that it will assume all responsibility for any damage to its property upon the premises of the Railroad caused by fire, whether communicated directly or indirectly by or from locomotive engines upon the Railroad or otherwise.

6. This agreement may be terminated by either the Railroad or the Licensee on any day by giving to the other Party thirty (30) days' written notice of intention to terminate. Such notice on the part of the Railroad may, at its option, be given by posting in a conspicuous place upon the premises and this agreement in such case shall terminate in thirty (30) days after such posting.

The Licensee shall remove all its poles, wires or other materials from the said premises within ten (10) days after the termination of this license and shall restore the said premises as nearly as possible to as good order and condition as when original entry thereon was made by the said Licensee, and upon failure to do so the Railroad may at any time thereafter remove said materials and dispose of them at the expense of the Licensee without liability for such removal and disposition and may repair the said premises at the expense of the Licensee.

It is agreed by all the Parties hereto that the covenants and agreements herein contained shall be binding upon and shall inure to the benefits of the heirs, executors, administrators, successors and assigns of the Parties hereto respectively, and the word "Licensee" shall be considered as meaning the "Licensee, his/its heirs, executors, administrators, successors and assigns," and the **Boston and Maine Railroad** shall be considered as meaning the "Boston and Maine Railroad or its successors" wherever the context does not render such construction impossible.

In Witness Whereof the Licensee has hereunto set **its** hand and seal and the Boston and Maine **Corporation** has executed these presents on the day and year first above written.  
Form Approved

Execution Approved

**BOSTON AND MAINE CORPORATION**  
**RAILROAD**

By \_\_\_\_\_  
CHIEF ENGINEER

**NEW ENGLAND POWER COMPANY**

By *[Signature]*

## **EXHIBIT 2**



**Jonathan Meindersma**

---

**From:** Jonathan Meindersma [Jmeindersma@pwrr.com]  
**Sent:** Thursday, March 12, 2009 9:44 AM  
**To:** 'mark.browne@us.ngrid.com'  
**Subject:** FW: view existing pole line on rail right-of-way -- North Worcester  
Hi Mark, just following up on this, please advise when you have a chance.

Thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

---

**From:** Jonathan Meindersma [mailto:Jmeindersma@pwrr.com]  
**Sent:** Tuesday, March 10, 2009 5:04 PM  
**To:** 'mark.browne@us.ngrid.com'  
**Subject:** view existing pole line on rail right-of-way -- North Worcester

Mark

Our director of engineering has suggested we view the existing facilities. He is available next Wednesday (3/18) or Friday (3/20) or Wednesday, Thursday, or Friday the week after that (3/25-27). Would you please advise which (if any) of those dates work for National Grid? If there are time constraints on any of the acceptable dates, please indicate those as well, if you would be so kind.

Thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

7/16/2010

**Jonathan Meindersma**

---

**From:** Jonathan Meindersma [Jmeindersma@pwrr.com]  
**Sent:** Thursday, March 12, 2009 4:15 PM  
**To:** 'Martin, Michael K.'  
**Cc:** 'Browne, Mark S.'; 'Dupre, Richard E.'; 'Gillis, Leo'; 'Swalec, James'; 'Aho, David J.'; 'Zuccolotto, James M.'  
**Subject:** RE: O141-S / Gardner Br, Worcester

Hi Mike

Wed. 3/25 at 9 AM is best for us. Would you prefer to meet here? I believe we can accommodate 3 in our HYRAIL vehicle.

Please advise & thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

---

**From:** Martin, Michael K. [mailto:MICHAEL.MARTIN@us.ngrid.com]  
**Sent:** Thursday, March 12, 2009 10:16 AM  
**To:** JMeindersma@pwrr.com  
**Cc:** Browne, Mark S.; Dupre, Richard E.; Gillis, Leo; Swalec, James; Aho, David J.; Zuccolotto, James M.  
**Subject:** O141-S / Gardner Br, Worcester

Jonathan,

We would like to meet with your engineering representatives on location to look at your proposed new rail.

Please indicate your availability for;

3/25 AM PM

3/26 PM

Thank you.  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

508-389-9111

7/16/2010

\*\*\*\*\*

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7/16/2010

**Jonathan Meindersma**

---

**From:** Martin, Michael K. [MICHAEL.MARTIN@us.ngrid.com]

**Sent:** Monday, March 16, 2009 12:40 PM

**To:** Jonathan Meindersma

**Subject:** RE: O141-S / Gardner Br, Worcester

Jon,

Myself and 2 engineers from our Transmission Line Engineering department will meet with you at 9 AM on 3/25 at your 75 Hammond St address.

Thanks,  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

508-389-9111

---

**From:** Jonathan Meindersma [mailto:jmeindersma@pwrr.com]

**Sent:** Monday, March 16, 2009 9:08 AM

**To:** Martin, Michael K.

**Subject:** FW: O141-S / Gardner Br, Worcester

*Just following up to confirm. Please advise when you have a minute.*

Thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

---

**From:** Jonathan Meindersma [mailto:jmeindersma@pwrr.com]

**Sent:** Thursday, March 12, 2009 4:15 PM

**To:** 'Martin, Michael K.'

**Cc:** 'Browne, Mark S.'; 'Dupre, Richard E.'; 'Gillis, Leo'; 'Swalec, James'; 'Aho, David J.'; 'Zuccolotto, James M.'

**Subject:** RE: O141-S / Gardner Br, Worcester

Hi Mike

7/16/2010

Wed. 3/25 at 9 AM is best for us. Would you prefer to meet here? I believe we can accommodate 3 in our HYRAIL vehicle.

Please advise & thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

---

**From:** Martin, Michael K. [mailto:MICHAEL.MARTIN@us.ngrid.com]  
**Sent:** Thursday, March 12, 2009 10:16 AM  
**To:** JMeindersma@pwrr.com  
**Cc:** Browne, Mark S.; Dupre, Richard E.; Gillis, Leo; Swalec, James; Aho, David J.; Zuccolotto, James M.  
**Subject:** O141-S / Gardner Br, Worcester

Jonathan,

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Please indicate your availability for;

3/25 AM PM

3//26 PM

Thank you.  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

508-389-9111

\*\*\*\*\*

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7/16/2010

**Jonathan Meindersma**

---

**From:** Martin, Michael K. [MICHAEL.MARTIN@us.ngrid.com]

**Sent:** Monday, March 16, 2009 9:50 AM

**To:** Jonathan Meindersma

**Subject:** RE: O141-S / Gardner Br, Worcester

Jon,

I have been out of the office. I sent this to our engineering group to confirm, and will respond as soon as I hear back from them.

Thanks,  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

508-389-9111

---

**From:** Jonathan Meindersma [mailto:Jmeindersma@pwrr.com]

**Sent:** Monday, March 16, 2009 9:08 AM

**To:** Martin, Michael K.

**Subject:** FW: O141-S / Gardner Br, Worcester

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Thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755.4000 x364

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**From:** Jonathan Meindersma [mailto:Jmeindersma@pwrr.com]

**Sent:** Thursday, March 12, 2009 4:15 PM

**To:** 'Martin, Michael K.'

**Cc:** 'Browne, Mark S.'; 'Dupre, Richard E.'; 'Gillis, Leo'; 'Swalec, James'; 'Aho, David J.'; 'Zuccolotto, James M.'

**Subject:** RE: O141-S / Gardner Br, Worcester

Hi Mike

7/16/2010

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Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755-4000 x364

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**From:** Martin, Michael K. [mailto:MICHAEL.MARTIN@us.ngrid.com]  
**Sent:** Thursday, March 12, 2009 10:16 AM  
**To:** JMeindersma@pwrr.com  
**Cc:** Browne, Mark S.; Dupre, Richard E.; Gillis, Leo; Swalec, James; Aho, David J.; Zuccolotto, James M.  
**Subject:** O141-S / Gardner Br, Worcester

Jonathan,

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Please indicate your availability for;

3/25 AM PM

3/26 PM

Thank you.  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

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\*\*\*\*\*

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7/16/2010

**Jonathan Meindersma**

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**From:** Jonathan Meindersma [jmeindersma@pwrr.com]  
**Sent:** Monday, March 16, 2009 9:08 AM  
**To:** 'Martin, Michael K.'  
**Subject:** FW: O141-S / Gardner Br, Worcester  
Just following up to confirm. Please advise when you have a minute.

Thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755-4000 x364

---

**From:** Jonathan Meindersma [mailto:jmeindersma@pwrr.com]  
**Sent:** Thursday, March 12, 2009 4:15 PM  
**To:** 'Martin, Michael K.'  
**Cc:** 'Browne, Mark S.'; 'Dupre, Richard E.'; 'Gillis, Leo'; 'Swalec, James'; 'Aho, David J.'; 'Zuccolotto, James M.'  
**Subject:** RE: O141-S / Gardner Br, Worcester

Hi Mike

Wed. 3/25 at 9 AM is best for us. Would you prefer to meet here? I believe we can accommodate 3 in our HYRAIL vehicle.

Please advise & thanks,  
Jon

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond St  
Worcester, MA 01610  
508.755-4000 x364

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**From:** Martin, Michael K. [mailto:MICHAEL.MARTIN@us.ngrid.com]  
**Sent:** Thursday, March 12, 2009 10:16 AM  
**To:** JMeindersma@pwrr.com  
**Cc:** Browne, Mark S.; Dupre, Richard E.; Gillis, Leo; Swalec, James; Aho, David J.; Zuccolotto, James M.  
**Subject:** O141-S / Gardner Br, Worcester

Jonathan,

We would like to meet with your engineering representatives on location to look at your proposed new rail.

Please indicate your availability for,

7/16/2010



3/25 AM PM

3//26 PM

Thank you.  
Mike

Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
National Grid  
25 Research Drive  
Westborough, MA 01582

508-389-9111

\*\*\*\*\*  
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7/16/2010

## **EXHIBIT 3**



FOUNDED 1844

April 28, 2009

National Grid USA  
Attn: Michael K. Martin  
Senior Real Estate Representative  
Real Estate Energy Delivery Support  
25 Research Drive  
Westborough, MA 01582

Re: Transmission line on our Gardner Branch, Worcester, MA, north of Garden Street


Dear Mike:

As you are aware, Providence and Worcester Railroad Company ("P&W") has for some time been considering constructing an additional set of railroad tracks between Garden Street and Barber's Crossing. National Grid has a 115 KV transmission line, including a number of poles, on and adjacent to P&W's rail right-of-way in that area (the "ROW"). National Grid's occupation of the ROW is under a license which is terminable upon thirty (30) days' notice. P&W has held off on taking this action, realizing it would require National Grid to relocate that portion of the transmission line, including the poles, currently located on the ROW. Unfortunately, P&W cannot hold off any longer on these plans.

On March 10, 2009, the United States Surface Transportation Board issued a decision authorizing a joint venture between Pan Am Railways, Inc. ("Pan Am") and Norfolk Southern Railway Company ("Norfolk Southern") which will significantly increase Norfolk Southern's operations in New England. This joint venture has significant ramifications for rail freight moving in interstate commerce. CSX Transportation, Inc. ("CSX") currently interchanges freight with Pan Am at three interchange points: Rotterdam Junction, NY, Springfield, MA, and Worcester, MA (Barber's Crossing). P&W anticipates that CSX will, with respect to freight being shipped to points east of Ayer, MA, interchange with Pan Am at Barber's Crossing instead of the other two interchange points. As a result, P&W anticipates a significant increase in the amount of freight moving in interstate commerce through Barber's Crossing. P&W believes this increase in traffic will require a second set of tracks.

Currently, the only land owned by P&W where such tracks could be located is the area in the immediate vicinity of the existing single track on P&W's Gardner Branch between Garden Street and Barber's Crossing. The engineering plans for a second track, a copy of which will be forwarded under separate cover, indicate that National Grid's poles interfere with the track layout for such second track. Therefore, P&W is exercising its right, as provided in the license agreement, to require National Grid to remove its facilities from the ROW.


**PROVIDENCE AND WORCESTER RAILROAD COMPANY**  
75 HAMMOND STREET, WORCESTER, MA 01610 P.O. BOX 16551, WORCESTER, MA 01601  
TELEPHONE (508) 755-4000



April 28, 2009  
National Grid USA  
Page 2 of 2

If National Grid prefers to seek an easement from P&W in order to avoid the removal of its facilities from the ROW, P&W would consider granting such an easement, subject to certain conditions. P&W would require additional land for the second track, and the cost of such land, together with any additional expense related to the change in location, would need to be added to the cost of such easement, if such easement should prove to be feasible. In the alternative, please make arrangements to relocate the poles and the transmission line from P&W's property. While the license requires only thirty (30) days' notice, P&W is giving National Grid additional notice in order to permit the timely and orderly relocation of the transmission line and removal of the existing facilities presently located on or over P&W's property. Kindly respond with National Grid's plan of action within thirty (30) days of the date hereof

Yours truly,



Jonathan Meindersma  
Assistant General Counsel

c: P. Scott Conti, President  
Marie A. Angelini, General Counsel

## **EXHIBIT 4**



FOUNDED 1844

VIA CERTIFIED MAIL #7008 2810 0000 4459 9779  
Return Receipt Requested

March 3, 2010

National Grid – Legal Department  
Attn: Megan F.S. Tipper, Senior Counsel--Real Estate  
40 Sylvan Road  
Waltham, MA 02451


Re: Termination of license for pole line on Gardner Branch

Dear Megan:

As you are aware, National Grid ("NG"), through its subsidiary New England Power Company ("NEPCO"), currently occupies a portion of the right-of-way of Providence and Worcester Railroad Company ("P&W") in Worcester, Massachusetts pursuant to a certain Pole And Wire Agreement dated August 1, 1971 between NEPCO and the trustees of the property of Boston and Maine Corporation, P&W's predecessor-in-interest (the "License"). The occupation consists of a transmission line which P&W believes NG refers to as "O-141S", including all of the poles, foundations, equipment, appurtenances and other property of NG related thereto, located in, on, over or affixed to the right-of-way ("ROW") as described and depicted in the License.

Under Paragraph 6 of the License, P&W has the right to terminate the License upon thirty (30) days' written notice. As a courtesy, however, P&W is hereby providing NG with sixty (60) days' written notice of termination of the License. Unless this notice is earlier rescinded, therefore, the License will terminate at 12:01 a.m. on Monday, May 3, 2010. Thereafter, NG will have no right to use, occupy, or enter upon the ROW. Therefore, kindly make arrangements to remove from the ROW no later than 12:01 a.m. on Monday, May 3, 2010 all poles, foundations, wires, equipment, appurtenances, or any other property of NG in, on, over, or affixed to the ROW.

Yours truly,

  
Jonathan Meindersma  
Assistant General Counsel

c: Marie A. Angelini, General Counsel

**PROVIDENCE AND WORCESTER RAILROAD COMPANY**  
75 HAMMOND STREET, WORCESTER, MA 01610 ~~P.O. BOX 16551, WORCESTER, MA 01601~~  
TELEPHONE (508) 755-4000

## **EXHIBIT 5**



FOUNDED 1844

VIA CERTIFIED MAIL #7008 2810 0000 4459 5214  
Return Receipt Requested

May 25, 2010

National Grid – Legal Department  
Attn: Megan F.S. Tipper, Senior Counsel--Real Estate  
40 Sylvan Road  
Waltham, MA 02451

Re: Termination of license for pole line on Gardner Branch

Dear Megan


On March 3, 2010, Providence and Worcester Railroad Company ("P&W") furnished New England Power Company ("NEPCO"), a National Grid ("NG") subsidiary, with written notice effective May 3, 2010 (the "Termination Notice") terminating NEPCO's license to occupy a portion of P&W's right-of-way on its Gardner Branch in Worcester, Massachusetts (the "ROW"), which license was granted pursuant to a certain Pole And Wire Agreement dated August 1, 1971 between P&W's predecessor-in-interest, the trustees of the property of Boston and Maine Corporation ("B&M") and NEPCO (the "1971 License"). NG, by an email from Bess Gorman dated May 18, 2010, advised P&W that the proper license for NEPCO's occupation of the ROW was not the 1971 License referenced in the Termination Notice but, instead, that certain Pole And Wire Agreement dated October 24, 1966 between NEPCO and B&M (the "1966 License").

According to Ms. Gorman, the 1966 License authorizes occupation of the ROW for NG's pole line designated as "O-141S", while the 1971 License authorizes a separate pole line designated as "O-141N" which runs roughly parallel to and east of O-141S. This information is, apparently, new to both NG and P&W. As recently as last May, when NG approached P&W to "reconductor" O-141S, both parties examined and quoted from the 1971 License, and P&W referenced the 1971 License in its letter of May 18, 2009 assenting to NG's installation of larger conductors on O-141S, as NG requested and upon which assent NG presumably relied as a legal basis for installing those conductors last year.

P&W and NG were mutually mistaken about which licenses applied to the O-141S and O-141N pole lines. P&W notes that approximately 180 linear feet of the O-141N line is on the ROW to which the Termination Notice applies. As to the remainder of the ROW, P&W believes that its Termination Notice sufficiently identifies the property subject to the Termination Notice and that it was therefore effective

**PROVIDENCE AND WORCESTER RAILROAD COMPANY**  
75 HAMMOND STREET, WORCESTER, MA 01610 P.O. BOX 16551, WORCESTER, MA 01601  
TELEPHONE (508) 755-4000





National Grid  
May 25, 2010  
Page 2 of 2

to terminate NEPCO's rights to occupy any part of the P&W ROW referenced in either the 1966 License or the 1971 License as of May 3, 2010. In an abundance of caution, however, P&W hereby furnishes written notice of termination of the 1966 License and the 1971 License, together with any and all rights NEPCO may have to continue to occupy any part or portion of P&W's ROW as may have been furnished by either the 1966 License or the 1971 License, said termination to be effective thirty (30) days from the date hereof as provided in Paragraph 6 of the each License.

Yours truly,



Jonathan Meindersma  
Assistant General Counsel

c Marie A. Angelini, General Counsel

## **EXHIBIT 6**

# nationalgrid

March 31, 2010

**BY OVERNIGHT MAIL**

Jonathan Meindersma  
Assistant General Counsel  
Providence and Worcester Railroad Company  
75 Hammond Street  
Worcester, MA 01610

Re: License of New England Power Company for the transmission pole line on Gardner Branch

Dear Attorney Meindersma:

On March 3, 2010, we received your letter ("Termination Letter"), attempting to terminate the Pole and Wire Agreement dated August 1, 1971 (the "License") between New England Power Company d/b/a National Grid ("NEP") and Providence and Worcester Railroad Company ("P&W") as successor to Boston & Maine Railroad, the original licensor. The License provides for the occupation of NEP's O-141S, 115,000 volt (115 kV) transmission line ("O14S line") over a portion of P&W's Gardner Branch right of way ("ROW") located in Worcester, MA. The Termination Letter attempts to terminate the License as of 12:01 a.m., Monday, May 3, 2010 and requests the removal of all of NEP's poles, foundations, wires, equipment, appurtenances or other property in, on, over, or affixed to the ROW.

Although not specifically stated in the Termination Letter, it is our understanding that P&W is requesting the removal of approximately one mile of the O141S line to accommodate the construction of a second railroad track. NEP was made aware of P&W's plans for a second track last May and promptly began working towards designing the relocation of the affected portion of the O141S line. NEP evaluated the location of the O141S line and the proposed track, and prepared preliminary plans which would allow the O141S line to coexist within P&W's ROW alongside the proposed second track. Those preliminary plans were forwarded by NEP to P&W's engineering department in early January. It is our understanding that P&W engineers have since contacted NEP's engineering department and have initiated discussions regarding the O141S Line relocation.

It is important to understand that we are not in a position to be able to take out the O141S line by May 3, 2010. Additional engineering design and sufficient time to construct a new line is required before NEP can de-energize and remove the O141S from its present location. The O141S line is one of two 115 kV lines that are each needed to provide power to NEP's Nashua Street substation in accordance with established industry reliability criteria. Nashua Street is a

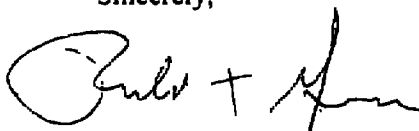
major source of power to the electric distribution network that serves the City of Worcester and the surrounding areas.

NEP is required to adhere to certain reliability standards and criteria for electric transmission companies. The applicable standards, guides, and criteria are created under the purview of the North American Electric Reliability Council, which sets the standards for North America; the Northeast Power Coordinating Council, the New England Power Pool the New England Independent System Operator, and National Grid. The criteria require transmission operators, such as NEP, to design and operate their electric transmission systems so that adequate voltage and thermal margins and voltage performance can be maintained even when various contingencies occur. Both of the high voltage lines into the Nashua Street substation are required to meet these reliability criteria. The O141S line also is an important part of the transmission network of the New England area. Therefore, if it is taken out of service, it will impact not only the City of Worcester, but also the reliability of the transmission network throughout the region.

Massachusetts law governing the operation of utilities has anticipated that there may be occasions when railroad use would conflict with transmission lines. To address circumstances where a railroad may attempt to terminate the right of the utility to have transmission lines along a railroad, the law includes safeguards and places such matters under the jurisdiction of the Department of Public Utilities ("DPU"). These safeguards are found in M.G.L. c. 164, §73 which provides, in pertinent part, that if a transmission company has lawfully constructed a transmission line within the location of a railroad, "then it shall not thereafter be required to remove, abandon or cease to operate such facilities without the consent of the department." Therefore, the consent of the DPU is required before NEP can be required to remove the O141S line from the P&W ROW. Having stated this, NEP is very interested in working out a mutually acceptable relocation arrangement that accommodates both P&W and NEP's interests. In fact, we are convinced that a solution can be worked out that would avoid the necessity of a proceeding at the DPU.

We look forward to working cooperatively to achieve a mutually agreeable solution. Please continue to coordinate with Meg Tipper on any legal issues related to this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Gerwatowski", followed by a plus sign and another signature.

Ronald T. Gerwatowski  
Deputy General Counsel

cc: Mark Browne  
Bess Gorman  
Michael Martin  
Brian Mulcahy  
Megan Tipper  
Steven Towle